



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

**W.P(MD)Nos.17966 to 17968 of 2017 and
W.M.P.(MD) Nos.14478 to 14481 of 2017**

1. M.Muthusamy ... Petitioner in W.P.(MD) No.17966 of 2017
2. V.Veluchamy ... Petitioner in W.P.(MD) No.17967 of 2017
3. M.Rajendran ... Petitioner in W.P.(MD) No.17968 of 2017

-vs-

The Commissioner,
Palani Municipality,
Palani, Dindigul District.

... Respondent in all WPS

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Mandamus, calling for the records pertaining to the impugned order passed by the respondent in his proceedings in Na.Ka.No.1626/2016/A1 dated 26.07.2017 and the consequential order dated 31.08.2017 and quash the same as illegal consequently directing the respondent to renew the lease in respect of the petitioners' shop Nos.1, 3 & 2 respectively, New Dharapuram Road, Palani, Dindigul District.

For Petitioner : Mr.T.Lenin Kumar

For Respondent : Mr.G.Arjunan

C O M M O N O R D E R

The issue involved in all these writ petitions is one and the same and therefore, all these matters are taken up together for final disposal by way of this common order.

2. For the sake of brevity, the facts are being taken from W.P.(MD) No.17966 of 2017, in which, the petitioner was asked to pay a sum of Rs.36,909/- as arrears of rent with effect from 01.07.2016 to 31.03.2017 and a sum of Rs.22,065/- from 01.04.2017 to 31.08.2017, failing which, the shop will be closed and further action will be taken.

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3. Heard the learned counsel for the petitioners and the



learned counsel for the respondent.

4. M.Muthusamy / the petitioner in W.P.(MD) No.17966 of 2017, who is leased out Shop No.1, measuring to an extent of 160 sq.ft., belonging to Palani Municipality, is running a Tailoring Shop and in the year 2009, the rent was sought to be revised as per G.O.Ms.No.92 Municipal Administration and Water Supply Department dated 03.07.2007, as per which, the lease rent in respect of each shop is fixed for a period of 9 years and the original lease rent fixed shall be revised once in 3 years and after 9 years, the lease rent shall be re-fixed. It is the further case of the petitioner that his lease period of 9 years came to an end in July, 2016, on account of which, a notice dated 26.07.2017 was issued to the petitioner in terms of G.O.Ms.No.92 dated 03.07.2017, intimating revision of rent from Rs.312/- to Rs.4,413/- per month from July, 2016 onwards. Consequent thereto, the respondent further passed the impugned order dated 31.08.2017, as stated supra.

5. The learned counsel for the petitioners would submit that the respondent must take into consideration the affordable condition of the petitioners and the profit being derived from the business run in the shops before enhancement of the rent. He would further submit that even assuming for the sake of argument that the rent has been fixed in consonance with the provisions of the Rent Control Act on the basis of the market value of the property, still the amount so fixed is highly excessive and untenable in law. He would also submit that without providing the base materials, such as committee report, calculation sheet etc., based on which such enhancement has been made and without hearing the lease holders, the fixation of such exorbitant rent cannot be justified and therefore, the impugned order of demand is liable to be set aside at the threshold.

6. On the other hand, the learned counsel for the respondent has contended that the issue involved in this case is no longer *res integra*, as the licensees have no vested rights to seek automatic renewal of licence in eternity. He has further contended that the object of letting out the shops is to augment more revenue for the respondent municipality for the purpose of using the same for welfare measures and a huge sum of money is required for development of the infrastructural activities and providing basic amenities to the residence/public at large. In the midst of his argument, he has also relied upon the judgment of this Court in the case of **Krishnamoorthy and others vs. The Rajapalayam Municipality, Rep. by its Commissioner, Rajapalayam [W.P. (MD) Nos.9333 to 9342 of 2017 etc., batch] decided on 10.07.2017**, wherein, this Court, by citing various judgments of the Hon'ble Supreme Court and this Court, had dismissed the batch of writ petitions, holding that there is nothing wrong on the part



of the Municipality in enhancing the rent with the sole object to generate income to the municipality so as to concentrate on the welfare measures. Therefore, it is the contention of the respondent that these writ petitions have to be dismissed *in limine*.

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7. It is no doubt true and there is no second opinion that there is no automatic extension of lease and it cannot be renewed on its every expiry, but at the same time, it is to be remembered that any decision in respect of enhancement of rent should be only after following due process of law. In the given case on hand, the principles of *audi alteram partem*, has not been followed. Though the State is under obligation to secure the best market price available in a market economy, it should be fair and reasonable and revision should be only after proper notice / communication to the lease holders and after receipt of their objections and the unexpected hike on one fine morning is unheard of under law, that too with retrospective effect.

8. It was also brought to the attention of this Court that the State has issued a circular dated 02.02.2009, by which suitable instructions have been issued to the authorities to give an opportunity to the tenants before the rent is finally fixed, based on which, a Hon'ble Division Bench of this Court has passed an order dated 06.02.2009 in the case of **Arulmigu Angala Parameswari and Kasivishwanathaswami Temple Adimanaiveal House Owners Association**, reported in **2009 (6) CTC 512**, vide which, the authorities were directed to fix or refix the lease rent in accordance with law after notice to the respective tenants.

9. In view of the foregoing discussions and also taking into account the proceedings issued by the State dated 02.02.2009, the following directions are issued in these writ petitions:

i) the respondent Municipality is directed to provide a copy of the report of the Committee as well as the calculation sheet to the petitioners forthwith, if not already given;

ii) This Court, normally while granting interim orders, would uniformly direct the petitioners / lease holders to deposit 50% of the enhanced rent immediately and in view of final disposal of all these writ petitions, the petitioners shall at the first instance, deposit 50% of the enhanced amount, if not already remitted and thereafter file their objections supported by whatever documents they have in their possession within a period of two weeks from the date of receipt of a copy of this order to the concerned authorities; and

iii) the authorities, upon satisfaction of the remittance of the 50% of the amount by the petitioners, on scrutiny of the



documents produced by the petitioners and upon considering their objections, shall fix or refix the lease rent in accordance with law, within a period of two weeks thereafter.

With the above directions, all these writ petitions are disposed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To:

The Commissioner,
Palani Municipality,
Palani, Dindigul District.

+3ccs to Mr.T.Lenin Kumar, Advocate in SR.No.80462,80463,80464

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AE/SV MMS/SAR4/09.10.2017/4P/5C

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